

Ryan v City of New York

2023 NY Slip Op 31639(U)

May 15, 2023

Supreme Court, New York County

Docket Number: Index No. 153028/2022

Judge: J. Machelle Sweeting

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

EVELYN RYAN,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF PARKS & RECREATION, THE NEW
YORK CITY HOUSING AUTHORITY

Defendants.

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INDEX NO. 153028/2022

MOTION DATE 01/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for DISMISSAL.

In the underlying action, plaintiff alleges that on March 13, 2021, she was injured by a metal plate that was exposed on a bench in the courtyard of the property located at 213 NAGLE AVENUE, NEW YORK, NEW YORK, County, City, and State of New York (the “subject property”). Defendants THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS (collectively, the “City”) seek an order pursuant to Civil Practice Law and Rules (“CPLR”) 3211 (a)(1), dismissing the complaint based on documentary evidence and dismissing the complaint, pursuant to CPLR 3211 (a)(7), for failure to state a cause of action.

On a motion to dismiss pursuant to CPLR 3211, the pleading is afforded a liberal construction and the facts as alleged in the complaint are accepted as true, and accorded the benefit of every possible favorable inference. The court determines only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83 [NY Ct. of Appeals 1994]).

The City defendants argue that they are not the proper parties to this action, because the City did not own, operate, maintain or control the premises on the date of the alleged incident. In support of this argument the City submitted, *inter alia*, a deed (NYSCEF Doc. No. 14) that was recorded on November 19, 1948, in which defendant The New York City Housing Authority (“NYCHA”) acquired title to the subject property. This deed was accompanied by a sworn Affidavit by David Schloss, a Senior Title Examiner with the New York City Law Department, (NYSCEF Doc. No. 14), which states, in part:

2. I have conducted a title search for 213 NAGLE AVENUE, NEW YORK, NEW YORK, designated on the fax map as Block 2216, Lot 1.
3. Record title for New York Block 2216, Lot 1, on MARCH 13, 2021, was in THE NEW YORK CITY HOUSING AUTHORITY, pursuant to a deed recorded NOVEMBER 19, 1948, in Liber 4597, Page 670.

The City also submitted the Answer filed by NYCHA (NYSCEF Docs. 2 and 13), which states, in part:

6. [NYCHA ...] admits ownership of the premises known as 213 Nagle Avenue, New York, New York, and operation, maintenance, and management of those portions of the premises used in common by all persons lawfully thereat; and reserves and refers all questions of law, fact, and/or conclusions raised therein to the trial court.

In opposition, plaintiff argues, first, that this motion is premature because “all discovery” remains outstanding. Plaintiff argues, second, that affidavits are not documentary evidence, and hence dismissal is not appropriate under CPLR 3211(a)(1) when a defendant utilizes affidavits as its basis for support.

A paper qualifies as “documentary evidence” only if it satisfies the following criteria: (1) it is “unambiguous”; (2) it is of “undisputed authenticity”; and (3) its contents are “essentially undeniable” (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189 (Sup. Ct. App. Div.

1st Dept 2019). Further, *Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:10 at 21-22 [2005 ed]* provides:

For dismissal, the proffered documents must “utterly refute” the allegations in the plaintiff's complaint, “conclusively establishing a defense as a matter of law” [...]. Note the extremism of the burden of proof—that the documentary evidence not only refute the allegations of the plaintiff's complaint, but “utterly” do so, and that defense not only be established as a matter of law, but that it “conclusively” do so. There is no room for daylight. Wiggle room is not countenanced. Close calls are not enough. Gray areas have no place within the ambit of CPLR 3211(a)(1). The document that is proffered must clearly say what it says and mean what it means. Courts will not grant motions brought under CPLR 3211(a)(1) on account of documentary evidence, and dismiss a plaintiff's complaint in lieu of an answer, unless the basis for doing so is clear, unambiguous, and absolute [internal citations omitted].

Plaintiff is correct that “factual affidavits [...] do not constitute documentary evidence within the meaning of the statute [CPLR 3211(a)(1)]” (*Calpo-Rivera v Siroka*, 144 AD3d 568 [1st Dept 2016]). Here, however, the City has presented a deed showing that NYCHA acquired record title to the subject property in 1948, and plaintiff has not submitted anything on the record to refute the validity of this deed.

Further, with respect to plaintiff's argument that this motion is premature, importantly, this court notes that NYCHA has admitted ownership, operation, maintenance, and management of the premises. Moreover, NYCHA does not oppose the City's motion and NYCHA did not file any cross-claims as against the City.

Given the above, this court finds that the City has satisfied their burden in showing that the City entities are improper parties in this case. *See also Briscoe v. New York City Housing Auth.*, Index No. 153188/17 (Sup. Ct. New York Cty., March 14, 2018)(granting the City's motion to dismiss the complaint based on the City showing that co-defendant NYCHA is the deed owner of the property where the plaintiff's accident occurred); *Kromah v. City of New York*, Index No. 155620/15 (Sup. Ct. New York County, May 9, 2016)(granting the City's motion to dismiss the

complaint upon the City establishing through affidavits that NYCHA owns the building and where NYCHA admits ownership in its Answer); *Jones v. New York City Dept. of Housing and Preservation, Index No. 111636/11* (Sup. Ct. New York County, February 19, 2013, at 2)(dismissing the complaint against defendants New York City Department of Housing and Preservation and the City of New York upon showing that a recorded deed showed that defendants were not the owners of the subject property).

Conclusion

For all the aforementioned reasons, it is hereby:

ORDERED that Motion #001 filed on behalf of defendants THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS is **GRANTED**; and it is further


ORDERED that the complaint is dismissed as against THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS with prejudice; and it is further

ORDERED that the caption shall be amended to remove THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS as named defendants; and it is further

ORDERED that this action is randomly reassigned to a General IAS part; and it is further

ORDERED that counsel for THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

5/15/2023					
DATE			J. MACHELLE SWEETING, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE